Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 74-1520

In the Supreme Court of the United States

OCTOBER TERM, 1973

RICHARD J. ELROD, Individually, and as Sheriff of Cook County, Illinois; THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, a corporation; DEMOCRATIC COUNTY CENTRAL COMMITTEE OF COOK COUNTY and RICHARD J. DALEY, individually, and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County,

Petitioners,

VS.

JOHN BURNS, FRANK VARGAS, JOSEPH DENNARD, and FRED BUCKLEY, on behalf of themselves and all other persons who were employees of the Sheriff of Cook County on December 7, 1970 and who were not protected by civil service or other laws against arbitrary discharge from their employment,

Respondents.

BRIEF IN OPPOSITION

JOHN C. TUCKER
ROBERT C. KECK, JR.
JENNER & BLOCK
One I.B.M. Plaza
Chicago, Illinois 60611
Attorneys for Respondents

Of Counsel:
DAVID GOLDBERGER
ROGER BALDWIN FOUNDATION
OF ACLU, INC.

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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JOHN BURNS, FRANK VARGAS, JOSEPH DENNARD, and FRED BUCKLEY, on behalf of themselves and all other persons who were employees of the Sheriff of Cook County on December 7, 1970 and who were not protected by civil service or other laws against arbitrary discharge from their employment,

Respondents.

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Respondents, four present or former employees of the office of the Sheriff of Cook County, Illinois, filed suit on behalf of themselves and other persons similarly situated

against Richard Elrod, individually and as Sheriff of Cook County, the Democratic Organization of Cook County ("The Organization"), The Democratic County Central Committee of Cook County ("The Committee") and Richard Daley, individually and as President of the Organization and Chairman of the Committee.

Respondents' verified complaint and affidavits charged that on or before December 7, 1970, when defendant Elrod, a Democrat, replaced Joseph Woods, a Republican, as Sheriff of Cook County, each of Respondents was employed in the Sheriff's office as a "deputy Sheriff" and that after December 7, 1970 each of Respondents was discharged or threatened with discharge for failing to obtain sponsorship from and actively support the Democratic party. Respondents' complaint sought an injunction against further political firings and reinstatement and damages for those already discharged.

The District Court denied Respondents' Motion for a Preliminary Injunction and thereafter dismissed the complaint for failure to state a claim on which relief could be granted. Respondents appealed both orders to the Court of Appeals for the Seventh Circuit.

After delaying consideration of the appeal pending the outcome of the petition for certiorari in *Illinois State Employees' Union, et al.* v. *Lewis,* 473 F.2d 561 (7th Cir. 1972), *cert. den.* 410 U.S. 928, 943 (1973) a unanimous panel of the Court of Appeals reversed the orders of the District Court and remanded this cause for trial on the merits. Petitioners' petition for rehearing *en banc* was denied. A timely petition for writ of certiorari followed.

REASONS FOR DENYING THE WRIT

I.
THE DECISION BELOW INVOLVES NARROW FACTUAL ISSUES UNWORTHY OF REVIEW BY THIS COURT

The decision which petitioners ask this Court to review reversed the dismissal of respondents' complaint and remanded this cause to the District Court for hearing on the merits in order to determine whether the acts complained of fit within the rationale of an earlier Seventh Circuit decision which this Court declined to review.[1]

On September 18, 1972, the Court of Appeals for the Seventh Circuit rendered its decision in *Illinois State Employees' Union, et al.* v. *Lewis,* 473 F.2d 561 (7th Cir. 1972), *cert. denied,* 410 U.S. 928, 943 (1973) holding that non-policy-making public employees may not be discharged on the basis of their political affiliations. The *Lewis* case involved "building employees, clerical workers, license examiners and the like" employed in the Illinois Secretary of State's office (473 F.2d at 563). The *Lewis* decision left the question of its applicability to specific public jobs to future determination on a case-by-case basis. (473 F.2d at 578)

The case at bar is one of several which have considered what constitutes "policy-making and nonpolicy-making" government positions under *Lewis.*[2] Respondents' Com-

[1] The Court of Appeals also reversed the District Court's denial of plaintiffs' motion for a preliminary injunction.

[2] Other cases include *Indiana State Employees' Union* v. *Negley,* 365 F. Supp. 225 (S.D. Ind. 1973) aff'd 501 F.2d 1239 (7th Cir. 1974); *Gould* v. *Walker,* 356 F. Supp. 421 (N.D. Ill. 1973); *Nunnery* v. *Barber,* 503 F.2d 1349 (4th Cir. 1974).